

Chairman Stahl and Members of the House Committee on Family and Children Services, I regret that I am not able to be present at today's hearing on HB 5908 and HB 5909. However, I appreciate this opportunity to comment on this legislation:

I write in opposition to HB 5908 and HB 5909. These bills plainly violate both the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution and Article 1 Section 4 of the Michigan Constitution. Additionally, if enacted, HB 5908 and HB 5909 would establish bad

public policy by permitting public adoption functions to be carried out—or not—at the whim of individual sectarian agencies, which would plunge adoption proceedings ^{for} ~~is~~ this state into chaos. Their passage would represent a radical deviation from Michigan's long-established principal in adoption proceedings: that the best interest of the child in need of adoption must be the paramount consideration. Moreover, these bills will cost the taxpayers of this State untold millions of dollars. I urge you to vote against the passage of these affronts to Constitutional

principal, to sound public policy, and to common sense.

HB 5908 and HB 5909 Are Unconstitutional

More than twenty years ago, New York City permitted sectarian agencies providing public foster care and adoption services to children to engage in just the sort of behavior that HB 5908 and 5909 would permit. This practice was challenged as unconstitutional, a violation of the First Amendment's Establishment Clause. After years of litigation, this practice was finally ended when the City of New York agreed to

discontinue the practice because it recognized that this means of placing children in the public child welfare system violated the Establishment Clause. See *Wilder v Bernstein*, 848 F. 2d 1338 (CA2 1988). Moreover, placing children pursuant to the religious preferences of sectarian contract agencies presents a substantial risk of violating individual children's First Amendment's Free Exercise Clause. For example, in 2004, the Federal District Court for the Southern District of New York held that when a Catholic Agency's worker placed a Jewish child into a Catholic home and a Catholic

school and made no effort to accommodate the child's religion, there was a question of fact as to whether the agency violated the child and the child's parent's right to freely exercise their religion. See *Bruker v City of New York*, 337 F. Supp. 2d 539 (2004).

Bad Public Policy

Michigan's adoption law has long made clear that in any adoption proceeding the paramount consideration is the best interests of the child who is in need of adoption services. Thus, Michigan's Adoption Code currently provides:

The general purposes of this chapter are:

(b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.

(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.

(d) To achieve permanency and stability for adoptees as quickly as possible.

MCL 710.21a. Enactment of HB 5908 and 5909 will radically depart from these long-standing principals by elevating the interests of others to a position paramount to those of the child in

need of adoption services. Such a radical departure from tried and true principal is simply unwarranted. I urge you to keep the focus of adoption proceedings in this state where it should be: exclusively on the needs and interests of the children who are in need of adoption services. To do otherwise, will delay permanency by unnecessarily complicating adoption proceedings and will prove costly both in human terms, as children wait unnecessarily for adoptive homes, and financially.

Financial Impact

The House Legislative Analysis of HB 5908 and 5909 indicates that these will have no fiscal impact upon the state. This is almost certainly incorrect because there are several substantial costs that would be associated with the passage of these bills. First, if these bills become law, Michigan would run a substantial risk of losing federal Title IV-E dollars (See 42 U.S.C. 670, et seq.). This is the federal funding program that funds most foster care services provided in this state. One provision of this law requires that the state make “reasonable efforts” to place children in adoptive homes when they are available for

adoption. Michigan has enacted a statutory provision specifically to ensure that Michigan complies with this federal funding mandate.

MCL 712A.19c requires that the family court periodically review cases to ensure that the Michigan Department of Human Services and its contract agencies (e.g., Catholic Social Services, Bethany Christian Services) are making “reasonable efforts” to get available children adopted. HB 5908 and 5909 will undoubtedly place unnecessary impediments in the way of children being adopted as soon as is consistent with their needs rather than the religious

convictions of the agency. Failure to comply with Title IV-E could result in Michigan losing millions of federal dollars to support its foster care program. Indeed, Michigan is already facing the loss of millions of dollars due to our current lack of compliance with Title IV-E.

Losing additional dollars will cause undue hardship for the abused and neglected children of this state. Unnecessarily risking the loss of these funds by passing these unnecessary bills would be an act of supreme irresponsibility by individuals who are supposed to be acting in the interests of all Michigan's residents.

Moreover, if enacted into law, these HB 5908 and 5909 would almost surely be immediately challenged as unconstitutional in federal lawsuits. These suits could take years and enormous amounts of taxpayer money to resolve. All of this to defend bills that are so obviously unconstitutional that one need not be a constitutional scholar to see that they could not withstand such a challenge.

As someone who has been involved in child protection and adoption work for nearly twenty years, I urge the members of this Committee to keep the focus of Michigan's

Adoption law where it should be: squarely on the best interests of the children in this state who are in need of adoption services. You can do so by voting against HB 5908 and HB 5909.

Thank you for the opportunity to address this matter.

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